

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MELISSA K. WALLEY AND  
THOMAS WALLEY**

**APPELLANTS,**

**v.  
LA PLATA VOLUNTEER FIRE  
DEPARTMENT, LA PLATA RURAL  
FIRE PROTECTION ASSOCIATION AND  
THE CITY OF LA PLATA**

**RESPONDENTS.**

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DOCKET NUMBER WD72615  
DATE: March 20, 2012

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Appeal From:

Adair County Circuit Court  
The Honorable Russell E. Steele, Judge

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Appellate Judges:

Division Two: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Mark D. Pfeiffer,  
Judge

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Attorneys:

Susan Ford Robertson, Kansas City, MO and Kenneth B. McClain II and Daniel A. Thomas,  
Independence, MO, for appellants.

D. Keith Henson, St. Louis, MO and John G. Schultz, Kansas City, MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MELISSA K. WALLEY AND  
THOMAS WALLEY,**

**APPELLANTS,**

**v.**

**LA PLATA VOLUNTEER FIRE  
DEPARTMENT, LA PLATA RURAL  
FIRE PROTECTION ASSOCIATION AND  
THE CITY OF LA PLATA,**

**RESPONDENTS.**

No. WD72615

Adair County

Before Division Two: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Mark D. Pfeiffer, Judge

State Trooper Melissa Walley and her husband, Thomas Walley, sued the La Plata Volunteer Fire Department, the City of La Plata, La Plata Rural Fire Protection Association and a number of employees of the above entities for injuries sustained by Walley in the line of duty, in an automobile accident that occurred on March 4, 2001. The accident occurred when Walley, responding to a call, crashed her police vehicle into a parked vehicle belonging to a volunteer firefighter (Mock) when she crested a hill and could not stop in time to prevent the accident. Walley sustained injuries and brought suit. Following a jury trial in which the jury found Walley ninety percent at fault for her injuries, Walley was awarded damages. Walley brought two points on appeal. First, Walley argues it was error for the trial court to submit the issue of comparative negligence to the jury as Walley was protected from assessment of fault by the doctrine of official immunity. Second, Walley claims it was error for the trial court to allow the introduction of evidence of her speed on the way to the scene of the accident on a different highway than the one on which the accident occurred.

**AFFIRMED**

**Division Two holds:**

In Point One, Walley argues it was error to submit the issue of comparative fault to the jury because she is protected by the doctrine of official immunity. Official immunity exists to protect public officers from judgments of liability when they are acting within their discretionary capacity during the course of their official duties and commit acts of ordinary negligence. The doctrine is inapplicable here where Walley is attempting to use the doctrine offensively to project her tortious conduct onto the person she is suing. Official immunity does not deny the existence of the negligence, but instead provides that an officer will not be liable for damages caused by his negligence. Official immunity does not deny the defendant the defense of comparative negligence, so long as it does not result in an affirmative judgment against Walley.

Under this Point, Wally also argues that she is protected from assessment of fault by a general release executed by individual defendant Mock, as he is an agent of La Plata. The language of the release is clear and unambiguous that Mock was signing the release as an individual and in no way purported to represent or bind La Plata. Nor does the release indicate he was giving up his right of the affirmative defense of comparative negligence. Point One is denied.

In Point Two, Walley argues it was error for the trial court to allow the introduction of certain evidence regarding Walley's speed on Highway 63 when the accident occurred later on Highway E. First, we find that Walley sufficiently preserved her objection to the admission of the evidence as to its relevance as the record makes evident that both the court and the parties understood that Walley objected on the basis that her speed on Highway 63 was not relevant. Walley voluntarily and extensively testified to her actions on highway 63 prior to the accident. The trial court is given broad discretion regarding the admission of evidence and we cannot say it was error to allow the introduction of specific evidence of Walley's speed on highway 63 to give the jury a complete picture of the course of events leading up to the accident. Further, Walley has not shown how she was prejudiced by this alleged error. A bare assertion that prejudice is shown by an "inadequate" damage award is insufficient. Given the conflicting evidence with respect to the extent of Walley's injuries and the fact that both parties argued to the jury that the evidence of Walley's speed on Highway 63 had no bearing on the speed she was travelling at the time of the accident, Walley has not shown how she was prejudiced by the admission of this evidence. Point Two is denied.

Opinion by Gary D. Witt, Judge

March 20, 2012

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